IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:04CV21-03-MU

FRANCISCO CURBELO,)	
Plaintiff,)	
v.)	
	ORDE	<u>R</u>
JIM PENDERGRAPH et al.,)	
Defendants.)	

THIS MATTER comes before the Court on the Court's own motion.

According to the record, on January 20, 2004, the Plaintiff filed a civil rights Complaint under 42 U.S.C. § 1983. On April 29, 2004 Plaintiff filed a Petition to Consolidate. Plaintiff filed an appeal from the August 8, 2004 Order of this Court dismissing his amended complaint as unintelligible. The Fourth Circuit Court of Appeals vacated this Court's Order and remanded for further proceedings. The Fourth Circuit also granted Plaintiff's "Motion To Petition of consolidation" which it construed as a motion to supplement his informal brief. On July 27, 2005, this Court ordered the Defendants to file an Answer detailing the claims contained in Plaintiff's Complaint and Petition to Consolidate. The record shows that on September 26, 2005, Defendants filed an Answer to the Plaintiff's Complaint. By their Answer, the Defendants deny the material allegations of the Plaintiff's Complaint and assert certain affirmative defenses, including the defense of qualified immunity, failure to state a claim for relief, statute of limitations and failure to exhaust.

Accordingly, by the instant Order, the Court advises the parties that dispositive motions,

particularly motions for summary judgment, must be filed within sixty (60) days of the date of this Order. In the event that the parties choose not to file any such motions, they should advise the Court of that fact within twenty (20) days of the date of this Order. Furthermore, inasmuch as the plaintiff is appearing <u>pro se</u>, the Court specifically advises him that under the provisions of Rule 56(a) of the Federal Rules of Civil Procedure, he may "move with or without supporting affidavits for a summary judgment" in his favor upon all or any portion of his claims.

NOW, THEREFORE, IT IS ORDERED:

- 1. That the parties have sixty (60) days from the date of this Order in which to file any dispositive motions which they may choose to file. However, in the event that either party chooses not to file a dispositive motion, such party shall advise the Court of that decision within twenty (20) days of the date of this Order;
- 2. That in the event any such dispositive motion is filed, the opposing party shall have thirty (30) days from the date of that party's receipt of that motion in which to file a response with this Court; and
- 3. That the Clerk shall provide plaintiff with a copy of Rule 56 of the Federal Rules of Civil Procedure.

Signed: October 17, 2005

Graham C. Mullen Chief United States District Judge